

Articles Related to Sovereign Immunity: An Insight into the Constitutional Framework

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Published: 19 Dec 2024

Description:

Sovereign immunity, derived from the legal maxim "Rex non potest peccare" (The King can do no wrong), refers to the state's exemption from legal liability or being sued without its consent. In India, sovereign immunity is a constitutional principle that seeks to balance governmental authority with individual rights. This article examines the provisions within the Indian Constitution that address sovereign immunity, its evolution, judicial interpretations, and a comparative analysis.

Understanding Sovereign Immunity:

Sovereign immunity originates from English common law and is based on the notion that the sovereign or state, as a representative of public authority, should not be subjected to legal action in the same way as private individuals. However, modern democracies, including India, have adapted this immunity to a more qualified form, permitting legal actions against the state in certain situations. In India, sovereign immunity is primarily linked to Articles 294, 299, 300, and 361 of the Constitution

<https://www.legalinfoprtal.com/sovereign-immunity-india-constitution/>

<https://www.indianconstitutionallawreview.com/articles/sovereign-immunity-articles-294-299-300-361>

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Article 300 – Suits and Proceedings Against the Government

Article 300 addresses the state’s liability in legal suits and proceedings, stating that:

The Union of India or a State Government may be sued in the same manner as the Dominion of India or Provincial Government could have been before independence.

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line-height:150%;font-size:12.0000pt;">This provision maintains the dual legacy of sovereign immunity while permitting legal accountability in certain situations, particularly for non-sovereign acts.

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line-height:150%;font-size:12.0000pt;"><o:p></o:p></p><p class="MsoNormal" align="justify" style="margin-bottom:0.0000pt;text-align:justify;text-justify:inter-ideograph; line-height:150%;"><span style="mso-spacerun:'yes';font-family:'Times New Roman';mso-fareast-font-family:Calibri;

line-height:150%;mso-ansi-font-weight:bold;font-size:12.0000pt;">Article 361 – Immunity for the President and Governors<span style="mso-spacerun:'yes';font-family:'Times New Roman';mso-fareast-font-family:Calibri;

line-height:150%;font-size:12.0000pt;">Article 361 provides absolute immunity to the President and Governors from legal proceedings during their tenure, ensuring no civil or criminal cases can be filed against them for actions performed in their official capacity. This immunity is limited to their time in office.

line-height:150%;font-size:12.0000pt;"><o:p></o:p></p><p class="MsoNormal" align="justify" style="margin-bottom:0.0000pt;text-align:justify;text-justify:inter-ideograph; line-height:150%;"><span style="mso-spacerun:'yes';font-family:'Times New Roman';mso-fareast-font-family:Calibri;

line-height:150%;mso-ansi-font-weight:bold;font-size:12.0000pt;"> </p><p class="MsoNormal" align="justify" style="margin-bottom:0.0000pt;text-align:justify;text-justify:inter-ideograph;

line-height:150%;"><span style="mso-spacerun:'yes';font-family:'Times New Roman';mso-fareast-font-family:Calibri;

line-height:150%;mso-ansi-font-weight:bold;font-size:12.0000pt;">Judicial Interpretations and Evolution:<span style="mso-spacerun:'yes';font-family:'Times New Roman';mso-fareast-font-family:Calibri;

line-height:150%;mso-ansi-font-weight:bold;font-size:12.0000pt;"><o:p></o:p></p><p class="MsoNormal" align="justify" style="margin-bottom:0.0000pt;text-align:justify;text-justify:inter-ideograph; line-height:150%;"><span style="mso-spacerun:'yes';font-family:'Times New Roman';mso-fareast-font-family:Calibri;

line-height:150%;font-size:12.0000pt;">Indian courts have played a vital role in interpreting and shaping the doctrine of sovereign immunity, striving to balance state immunity with the need for justice. Key cases include:<span style="mso-spacerun:'yes';font-family:'Times New Roman';mso-fareast-font-family:Calibri;

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line-height:150%;mso-ansi-font-weight:bold;font-size:12.0000pt;">P & O Steam Navigation Co. v. Secretary of State for India (1861)<span style="mso-spacerun:'yes';font-family:'Times New Roman';mso-fareast-font-family:Calibri;

line-height:150%;mso-ansi-font-weight:bold;font-size:12.0000pt;"><o:p></o:p></p><p class="MsoNormal" align="justify" style="margin-bottom:0.0000pt;text-align:justify;text-justify:inter-ideograph; line-height:150%;">In this pre-independence case, the court differentiated between sovereign and non-sovereign functions. It held that the state could claim immunity for sovereign acts (e.g., defense, public administration) but not for non-sovereign acts (e.g., commercial activities).<o:p></o:p></p><p class="MsoNormal" align="justify" style="margin-bottom:0.0000pt;text-align:justify;text-justify:inter-ideograph; line-height:150%;">Kasturi Lal v. State of Uttar Pradesh (1965)<o:p></o:p></p><p class="MsoNormal" align="justify" style="margin-bottom:0.0000pt;text-align:justify;text-justify:inter-ideograph; line-height:150%;">In this landmark case, the Supreme Court upheld the state's immunity for sovereign acts, even in cases of gross negligence. The court denied compensation for the loss of gold seized by the police, emphasizing that the state cannot be held liable for wrongful acts performed by officials in the exercise of sovereign powers.<o:p></o:p></p><p class="MsoNormal" align="justify" style="margin-bottom:0.0000pt;text-align:justify;text-justify:inter-ideograph; line-height:150%;">Nilabati Behera v. State of Orissa (1993)<o:p></o:p></p><p class="MsoNormal">This case marked a shift in judicial perspective, where the Supreme Court emphasized the right to compensation for violations of Fundamental Rights under Article 21. The court rejected </p><p class="MsoFootnoteText"> P & amp; O Steam Navigation Co. v. Secretary of State for India, (1861) 5 Bom H.C.R. 175, <u>https://www.indiankanoon.org/doc/424249/</u><span style="mso-spacerun:'yes';font-family:'Times New Roman';mso-fareast-font-family:Calibri;

font-size:10.0000pt;"><o:p></o:p></p><p class="MsoFootnoteText"> <u>https://www.indiankanoon.org/doc/1749776/</u><o:p></o:p></p><p class="MsoFootnoteText"> https://saslawchambers.com/services<u></u></p><p class="MsoFootnoteText"><u></u></p><p class="MsoNormal" align="justify" style="margin-bottom:0.0000pt;text-align:justify;text-justify:inter-ideograph; line-height:150%;">absolute sovereign immunity and awarded compensation for custodial death, reinforcing the principle of accountability for human rights violations.<o:p></o:p></p><p class="MsoNormal" align="justify" style="margin-bottom:0.0000pt;text-align:justify;text-justify:inter-ideograph; line-height:150%;">Union of India v. Prabhakaran Vijaya Kumar (2008)<o:p></o:p></p><p class="MsoNormal" align="justify" style="margin-bottom:0.0000pt;text-align:justify;text-justify:inter-ideograph; line-height:150%;">The Supreme Court ruled that the state could not invoke sovereign immunity to avoid compensating for negligence in railway operations, which were deemed non-sovereign functions. This judgment blurred the distinction between sovereign and non-sovereign acts.<o:p></o:p></p><p class="MsoNormal" align="justify" style="margin-bottom:0.0000pt;text-align:justify;text-justify:inter-ideograph; line-height:150%;"> </p><p

class="MsoNormal" align="justify" style="margin-bottom:0.0000pt;text-align:justify;text-justify:inter-ideograph; line-height:150%;">Contemporary Relevance:<o:p></o:p></p><p class="MsoNormal" align="justify" style="margin-bottom:0.0000pt;text-align:justify;text-justify:inter-ideograph; line-height:150%;">Sovereign immunity continues to play a significant role in modern governance, particularly in areas involving:<o:p></o:p></p><p class="MsoNormal" align="justify" style="margin-bottom:0.0000pt;text-align:justify;text-justify:inter-ideograph; line-height:150%;">Defense and National Security: Sovereign immunity is often invoked for actions related to military operations and national security policies.<o:p></o:p></p><p class="MsoNormal" align="justify" style="margin-bottom:0.0000pt;text-align:justify;text-justify:inter-ideograph; line-height:150%;">Public Administration: It shields the state from liability arising from policy decisions or administrative actions performed in good faith.<o:p></o:p></p><p class="MsoNormal" align="justify" style="margin-bottom:0.0000pt;text-align:justify;text-justify:inter-ideograph; line-height:150%;">Judicial and Legislative Functions: Actions taken by judges and legislators in their official capacities are typically protected by immunity.<o:p></o:p></p><p class="MsoNormal" align="justify" style="margin-bottom:0.0000pt;text-align:justify;text-justify:inter-ideograph; line-height:150%;">However, the growing emphasis on individual rights

and access to justice has led to limitations on the scope of sovereign immunity. Recent judicial trends in India reflect a preference for holding the state accountable in cases involving human rights violations, negligence, or abuse of power.

Comparative Perspectives:

India's approach to sovereign immunity has similarities with practices in other countries, with notable differences:

United States

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The U.S. follows a limited sovereign immunity doctrine under the Federal Tort Claims Act (FTCA), which permits lawsuits against the government for tortious acts of its employees, except in certain cases, such as military operations.

Union of India v. Prabhakaran Vijaya Kumar, (2008) 9 SCC 527.

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family: "Times New Roman"; color: rgb(5, 99, 193);"><https://saslawchambers.com/services></u><o:p></o:p></p><p class="MsoNormal" align="justify" style="margin-bottom:0.0000pt;text-align:justify;text-justify:inter-ideograph;line-height:150%;"><o:p></o:p></p><p class="MsoFootnoteText"> Prakash Sharma, Comparative Analysis of Sovereign Immunity in the US, UK, and India, International Comparative Law Review, (Feb. 23, 2021), <u>https://www.internationalcomparativelawreview.com/sovereign-immunity-us-uk-india</u></p><p class="MsoFootnoteText">
</p><p class="MsoNormal" align="justify" style="margin-bottom:0.0000pt;text-align:justify;text-justify:inter-ideograph;line-height:150%;">United Kingdom<o:p></o:p></p><p class="MsoNormal" align="justify" style="margin-bottom:0.0000pt;text-align:justify;text-justify:inter-ideograph;line-height:150%;">The Crown Proceedings Act of 1947 abolished the doctrine of absolute sovereign immunity, allowing legal actions against the state for wrongful acts committed by its servants.<o:p></o:p></p><p class="MsoNormal" align="justify" style="margin-bottom:0.0000pt;text-align:justify;text-justify:inter-ideograph;line-height:150%;">France<o:p></o:p></p><p class="MsoNormal" align="justify" style="margin-bottom:0.0000pt;text-align:justify;text-justify:inter-ideograph;line-height:150%;">France distinguishes between "acts of public service"

(subject to immunity) and "acts of management" (where the state is liable), much like India's distinction between sovereign and non-sovereign functions.

Challenges and Criticisms:

Arbitrary Application:

The distinction between sovereign and non-sovereign acts often results in inconsistent judicial outcomes.

Impact on Victims:

In some cases, such as Kasturi Lal, absolute immunity has been criticized for denying justice to victims.

Conflict with Fundamental Rights:

The doctrine of sovereign immunity may conflict with constitutional rights, such as the right to equality (Article 14) and the right to life (Article 21), calling for a more balanced approach.

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line-height:150%;mso-ansi-font-weight:bold;font-size:12.0000pt;"> </p><p class="MsoNormal" align="justify" style="margin-bottom:0.0000pt;text-align:justify;text-justify:inter-ideograph;
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line-height:150%;mso-ansi-font-weight:bold;font-size:12.0000pt;">Conclusion:<span style="mso-spacerun:'yes';font-family:'Times New Roman';mso-fareast-font-family:Calibri;
line-height:150%;mso-ansi-font-weight:bold;font-size:12.0000pt;"><o:p></o:p></p><p class="MsoNormal" align="justify" style="margin-bottom:0.0000pt;text-align:justify;text-justify:inter-ideograph;
line-height:150%;"><span style="mso-spacerun:'yes';font-family:'Times New Roman';mso-fareast-font-family:Calibri;
line-height:150%;font-size:12.0000pt;">Sovereign immunity, as enshrined in the Indian Constitution, represents a delicate balance between state authority and individual rights. Articles 294, 299, 300, and 361 lay the legal foundation, while judicial interpretations have progressively narrowed the scope of immunity to ensure greater accountability. In a democratic society, the doctrine of sovereign immunity must continue to evolve, aligning with principles of fairness, transparency, and the rule of law.<span style="mso-spacerun:'yes';font-family:'Times New Roman';mso-fareast-font-family:Calibri;
line-height:150%;font-size:12.0000pt;"><o:p></o:p></p><p class="MsoNormal" align="justify" style="margin-bottom:0.0000pt;border-bottom:1.0000pt solid windowtext;mso-border-bottom-alt:0.5000pt solid windowtext;
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margin-left:0.0000pt;mso-margin-top-alt:auto;mso-pagination:widow-orphan;
text-align:justify;text-justify:inter-ideograph;line-height:150%;"><span style="font-family:'Times New Roman';line-height: 150%; letter-spacing: 0pt; font-weight: bold;
font-size: 12pt;">Best Lawfirm in lucknow for Corporate Cases | Best Criminal Lawyers Near me | Best Criminal Advocates Near me | Best Corporate Advocates Near Me | Best Criminal Lawyers in Lucknow High Court | Best Corporate Lawyers in Lucknow High Court | Best Lawfirm in Uttar Pradesh | Best Criminal Advocates in Uttar Pradesh | Best Adcocates in Lucknow High Court | Best Lawyers in Lucknow High Court | Best Lawfirm in Lucknow High Court | Best Legal Advisor in Lucknow | Best Legal Consultant in Lucknow | Best lawfirm for legal Consultancy services in lucknow<span style="mso-spacerun:'yes';font-family:'Times New Roman';mso-fareast-font-family:Calibri;
line-height:150%;font-size:12.0000pt;"><o:p></o:p></p>